

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
File No. 5:17-CV-00357

WENDY G. CARROLL, ADMINISTRATOR
OF THE ESTATE OF THOMAS ANTHONY
CARROLL, DECEASED,

Plaintiff,

vs.

OAKLEY TRUCKING, INC., AND THAD
AUSTIN PITTMAN,

Defendants.

NOTICE OF REMOVAL

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA:

Pursuant to 28 U.S.C. §§ 1441 and 1446 and 28 U.S.C. § 1332, Oakley Trucking, Inc. (“Oakley”) and Thad Austin Pittman (“Mr. Pittman”) (collectively, the “Defendants”), by and through undersigned counsel, hereby file this Notice of Removal of this case from the General Court of Justice, Superior Court Division, Wayne County, North Carolina (“Superior Court”), to the United States District Court for the Eastern District of North Carolina, Western Division. In support of this Notice, Defendants state as follows:

1. This action is a civil action, and was commenced on June 12, 2017 with the filing and issuance of Summonses and a Complaint, in the North Carolina General Court of Justice, Superior Court Division for Wayne County, captioned “*Wendy G. Carroll, Administrator of the Estate of Thomas Anthony Carroll, Deceased v. Oakley Trucking, Inc.*” Case No. 17-CVS-954. Copies of the Summonses issued by the Superior Court and the Complaint filed by the Plaintiff are attached hereto as **Exhibit A**.

2. The United States District Court for the Eastern District of North Carolina, Western Division is the district court of the United States for the district and division embracing the place where this action is now pending.

3. Oakley received a copy of the Summons and Complaint on or about June 22, 2017.

4. Mr. Pittman received a copy of the Summons and Complaint on or about July 13, 2017

5. This Notice of Removal is timely under 28 U.S.C. § 1446(b). Defendants have not filed a pleading in the Superior Court in this action.

6. Removal of this civil action is based upon 28 U.S.C. § 1441. The action is brought in a state court of which the district courts have original jurisdiction pursuant to 28 U.S.C. § 1332(a) (diversity jurisdiction).

7. Plaintiff Wendy G. Carroll, Administrator of the Estate of Thomas Anthony Carroll, Deceased, alleges that Thomas Anthony Carroll (“Mr. Carroll”) was operating his motorcycle on a road that led to certain grain silos and offices at Case Farms Feed Mill in Duplin County, North Carolina, and that Defendant Mr. Pittman was operating a tractor trailer in the same direction on the road in front of Mr. Carroll. (Compl. ¶¶ 11, 13).

8. Plaintiff alleges that as Mr. Carroll was passing the tractor trailer on the left Mr. Pittman drove the tractor trailer “over onto the left side of the road and into the path” of Mr. Carroll and thereby allegedly caused a collision. (*Id.* at ¶ 20).

9. Plaintiff alleges that as a result of the collision and Mr. Pittman’s alleged negligence, Mr. Carroll “was thrown from the Honda motorcycle, under the rear tires of the trailer, and was run over and killed.” (*Id.* at ¶ 22).

10. Plaintiff alleges that the negligence of Mr. Pittman is imputed to Defendant Oakley “in its capacity as Defendant Pittman’s employer or principal.” (*Id.* at ¶ 35).

11. Plaintiff seeks to recover damages allegedly caused by the alleged wrongful death of Mr. Carroll, including, but not limited to, hospital, medical and ambulatory expenses incident to the injury resulting in death, compensation for pain and suffering of the deceased, compensation for loss of income of the deceased, compensation for loss of services of the deceased, and compensation for loss of society and companionship of the deceased. (*Id.* at ¶ 38).

12. Plaintiff alleges that at the time of Mr. Carroll’s death he was survived by four children ranging in age from 13 to 18. (*Id.* at ¶ 41).

13. Upon information and belief, the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs. Plaintiff has made a written settlement demand to Defendants of \$2,850,000.

14. This matter is between citizens of different states.

15. At the time of the commencement of this action, Plaintiff was a citizen and resident of Wayne County, North Carolina. (*Id.* at ¶ 1).

16. At the time of the commencement of this action and at the present time, Defendant Oakley was and is a corporation organized and existing under the laws of the State of Arkansas with its principal place of business in Little Rock, Arkansas, a state other than the State of North Carolina. (*Id.* at ¶ 6).

17. At the time of the commencement of this action, Defendant Mr. Pittman was and is a citizen and resident of Carriere, Mississippi, a state other than the State of North Carolina. (*Id.* at ¶ 8).

18. In accordance with 28 U.S.C. § 1446(d), after the filing of this Notice of

Removal, Defendants will give written notice thereof to Plaintiff and will file a copy of this Notice with the Clerk of the Superior Court, Wayne County, North Carolina.

WHEREFORE, Defendants hereby remove this action, from the General Court of Justice, Superior Court Division, Wayne County, North Carolina, to the United States District Court for the Eastern District of North Carolina, Western Division.

This the 18th day of July, 2017.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **NOTICE OF REMOVAL** was duly served upon those set forth below in accordance with the provisions of Rule 5 of the Federal Rules of Civil Procedure by depositing it in the United States Mail, first-class postage prepaid, addressed as follows:

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This the 18th day of July, 2017.

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